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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses	)	GN Docket No. 96-113

AT&T CORP. COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, and its Notice Of Inquiry released May 21, 1996 ("Notice"), AT&T hereby responds to the Commission's request for comments to assist it in its efforts pursuant to 47 U.S.C. § 257 to identify potential entry barriers for small businesses seeking to enter telecommunications and related markets.

I. SECTION 257 AUTHORIZES THE COMMISSION TO RELIEVE SMALL ENTITIES OF DISPROPORTIONATE REGULATORY BURDENS, NOT TO WAIVE SUBSTANTIVE LEGAL REQUIREMENTS

AT&T supports the Commission's efforts to identify regulatory requirements that may disproportionately burden small businesses. Small entrepreneurs, as well as larger firms, should be encouraged to participate in the competitive markets mandated by the Telecommunications Act of 1996, and no firm should be unnecessarily encumbered by rules that do not serve the substantive purposes of the Act.

However, the scope of the review authorized by § 257 is not unlimited. The overarching purpose of the 1996 Act is to eliminate subsidies and other economic distortions, and to permit competitive forces to determine the winners and losers in the telecommunications marketplace. It would be inconsistent with these deregulatory and pro-competitive objectives, and contrary to the 1996 Act, to assume that this proceeding was intended to carve out certain market niches as the preserves of small companies, or to subsidize their competition against larger entities.

In many cases, barriers to small firm entry may result from the fundamental structure of a given market. For example, there may be efficiencies attributable to economies of scale, or entry may require large up-front investments in physical plant. It is a matter of economics that not all markets can be easily penetrated by all firms, and § 257 is not intended to make it possible for small businesses to enter every sector of the telecommunications and information services industries despite legitimate reasons of economics or efficiency.

The Notice thus strays from § 257's intent when it adverts, based only on the floor remarks of two Members of the House of Representatives, to the possibility that small businesses might not be bound by § 222(e), which requires that exchange service providers furnish subscriber information on a nondiscriminatory basis to directory publishers.[1] This interpretation is contrary to both the public interest and congressional

[1] Notice, ¶ 5 n.12 (citing 47 U.S.C. § 222(e)).

intent, and serves to point out the incongruity of attempting to "protect" small firms from the free and fair competition mandated by the 1996 Act.

To permit some exchange providers to refuse to provide subscriber information could make it impossible for any publisher other than the favored small businesses to produce complete listings for a locality or, alternatively, would grant those small firms the power to extract exorbitant prices from publishers that sought to produce complete directories. While this windfall to the designated small firms would make market entry artificially easier and more attractive for them, it would introduce subsidies and other market distortions that ultimately would burden telecommunications end-users.

II. THERE IS NO EVIDENCE THAT SMALL BUSINESSES ARE CURRENTLY BEING DETERRED FROM ENTERING LONG DISTANCE RESALE

The Notice requests comment as to whether "high deposit requirements deter small business entry into resale."[2] However, as a threshold matter, there is no evidence to suggest that entry into long distance resale has been limited for any reason. According to the Telecommunications Resellers Association ("TRA"), the leading resellers' industry group, there are more than one thousand resellers in the United States.[3] This enormous number of competitors is not indicative of a market with high barriers to entry. In fact, the president of the TRA stated at the time that organization's census of

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2 Notice, ¶ 25.

3 Information from TRA home page: http://www.tra-dc.org, Aug. 8, 1996.

resellers was released that there were hundreds of such companies that the TRA was not able to survey "because so many are coming into the market every day."[4]

In any event, deposit requirements are the products of private firms' business judgments as to how much risk it is economically feasible for them to bear. Resale arrangements are, in effect, an extension of credit from an interexchange carrier ("IXC") to a reseller. IXCs grant volume discounts to resellers -- just as they do to other customers -- based on the resellers' commitments to use and pay for a given quantity of long distance services. If a customer is unable to meet its commitment, then the IXC must either absorb the loss or incur significant expense and delay to collect that account. Thus, sales under any volume discount program, whether to a reseller or to any other customer, involve an element of risk for an IXC. To help manage this risk, AT&T's tariffs establish commercially reasonable deposit requirements applicable not only to resellers, but to any customer taking service under the relevant plans.

The economics of competitive markets compel IXCs to push deposit requirements to the lowest levels they deem feasible. While AT&T has an obligation to its shareholders not to take unreasonable risks in incurring receivables, it also must seek sales opportunities where it can -- and resellers represent a large, and growing, segment of the industry.[5] The Commission has determined that AT&T and other nondominant IXCs lack

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4 TRA: Small Long Distance Company Ranks Vastly Undercounted, LEXIS, IAC Newsletter Database, IAC-ACC-No. 2494073, Aug. 29, 1994.

5 According to the TRA, in 1994 carriers sold $4.9 billion in wholesale long distance minutes to resellers. This figure has increased substantially since that time, as the TRA also reports that

(footnote continued on next page)

market power, and so none of these firms is capable of limiting resellers' ability to buy long distance services. Given this fact, IXCs' deposit requirements will tend toward an economically optimal level that maximizes the sum of their revenues from sales to resellers, minus their losses due to uncollectible charges to resellers. It is not in an IXC's interest to set its deposit requirements "too high," as doing so would cause it to lose business from resellers that are in fact good credit risks to competing IXCs with lower deposit requirements.

Although its deposit requirements apply equally to resellers and to other customers, AT&T has experienced significantly greater rates of non-payment and late payment by resellers, possibly because these firms must secure a sufficient customer base in order to cover their commitments to purchase long distance services. Before it instituted its current deposit requirements, AT&T's uncollectible expense percentage for SDN resale was eight times greater than for SDN commercial accounts, and its average days outstanding ("ADO") was over three times greater.[6] For 800 resale, AT&T's uncollectible percentage was nearly six times greater than for 800 commercial, while its ADO was over two times greater.[7]

(footnote continued from previous page)

resellers' revenues grew at 31% per year between 1993 and 1995. Information from TRA home page: http://www.tra-dc.org, Aug. 8, 1996.

6 Presentation by Janice M. Colby, AT&T, to FCC Common Carrier Bureau staff and other FCC staff, Aug. 16, 1995.

7 Id.

AT&T's deposit requirements not only do not distinguish between resellers and other businesses, they also do not make distinctions based upon a customer's size. It is important to note, however, that resellers run the gamut from small start-up firms to large companies. The Commission would be wrong to assume that all resellers are small businesses. For example, two of AT&T's recent resale contracts were with General Electric and Advantis -- a joint venture between IBM and Sears. Other resellers may not be quite so large as these companies, but many are sizable, established enterprises.

A review of AT&T's deposit requirements makes clear that they represent nothing more than reasonable security against the risks the company incurs under its discount programs. Recent tariff amendments establish two types of deposits: First, for what are deemed "deposits for recurring charges," AT&T will require an amount equal to up to three times estimated monthly usage charges[8] from a customer "(1) who has a proven history of late payments to the Company or (2) whose financial responsibility is not a matter of record..."[9] To determine whether a customer has a record of financial responsibility,

> AT&T will rely upon commercially reasonable factors to assess and manage the risk of non-payment. These factors may include, but are not limited to, payment

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[8] Deposit amounts under this provision range up to three months' usage charges because, due to billing cycles, that is the approximate minimum time that lapses before AT&T will terminate an account for non-payment.

[9] See, e.g., Tariff F.C.C. No. 1, Section 2.5.6.A; see generally Reply of AT&T Corp. in Tariff Transmittal No. 9229, filed Nov. 6, 1995, at 15-18.

history for telecommunications service, the number of years in business, history of service with AT&T, bankruptcy history, current account treatment status, financial statement analysis, and commercial credit bureau rating.[10]

These criteria are typical of the terms any business imposes before extending credit.

AT&T's second deposit requirement is a "deposit for shortfall charges," which must be paid if a customer fails to meet its tariffed revenue commitments for a substantial period of time.[11] A shortfall deposit is required only if a customer's estimated shortfall charge exceeds $300,000 -- that is, if AT&T is at risk for at least that amount.[12]

Any attempt by the Commission to "adjust" deposit requirements would interfere with the operation of the very economic forces that the 1996 Act seeks to promote. There is simply no evidence to suggest that competition in the resale market is not functioning to drive deposit requirements to efficient levels. To require IXCs to alter their deposit practices would override their assessments of the markets in which they

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10 See, e.g., Tariff F.C.C. No. 1, Section 2.5.6.A.1.

11 Specifically, a deposit is required if total annualized charges for the locations to be installed under a pricing plan meet less than 50% of the customer's annual commitment. After a six-month ramp-up period, a deposit may be required if these annualized charges are less than 85% of the commitment. Annualized charges are calculated as the greater of twelve times the customer's most recent monthly billing (which favors customers whose business is growing), or twelve times the customer's average for the prior twelve months. See, e.g., Tariff F.C.C. No. 1, Section 2.5.6.B.2.(a) & (b). AT&T's tariffs also provide for shortfall deposits if a customer removes specified locations or telephone numbers from its pricing plan, if doing so would cause its annualized charges to fall below the above thresholds. See, e.g., id. Section 2.5.6.B.2.(c).

12 See, e.g., id. at Section 2.5.6.B.

compete and substitute that of the Commission, forcing IXCs to subsidize resellers by lowering those firms' cost of capital.

Respectfully submitted,

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